



NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re Case No. 10-63261-A-7
NATASJA VAN DE GRAAF
Debtor.

FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING ORDER TO SHOW
CAUSE DIRECTED TO PRICE LAW GROUP, A PROFESSIONAL CORPORATION,
AND TO ALLAN S. WILLIAMS

A hearing on the court's Order to Show Cause was held April 6, 2011. Debtor Natasja Van De Graaf appeared, as did Allan S. Williams, debtor's previous attorney; Peter Fear, debtor's new attorney; and Greg Powell on behalf of the United States Trustee. At the conclusion of the hearing, the matter was taken under submission. This memorandum contains findings of fact and conclusions of law required by Federal Rule of Bankruptcy Procedure 7052 and Federal Rule of Civil Procedure 52. This is a core proceeding as defined in 28 U.S.C. §157(b)(2)(A).

Natasja Van De Graaf filed her chapter 7 case on November 16, 2010. In filing the case, she was represented by Allan S. Williams of Price Law Group. The Disclosure of Compensation of attorney for debtor states that the firm agreed to accept \$1,500, of which \$501 had been paid prior to the filing of the petition, and that \$999 remained due. It also reflected that \$299 of the filing fee had been paid.

1 The document also stated that "debtor is informed that
2 balance owing to PLG is subject to (probable) discharge.
3 Remaining payment will be made in debtors' sole discretion."

4 The Rule 2016(d) disclosure also states that "Price Law
5 Group may use a specially hired appearance attorney at the 341(a)
6 Meeting of Creditors. Price Law Group typically pays \$50-\$150
7 for such appearances."

8 On December 27, 2010, the United States Trustee filed a
9 Statement of Presumed Abuse, and on January 26, 2011, the United
10 States Trustee filed a § 707(b)(1) Motion to Dismiss Case. A
11 hearing on that motion was set for March 2, 2011, at 9:00 a.m.
12 No opposition to the motion was ever filed. On March 1, 2011, a
13 document entitled "Substitution of Attorney" was filed. That
14 document states: "ALLAN S. WILLIAMS hereby substitutes NATASJA
15 VAN DE GRAAF, IN PRO PER, in the above captioned bankruptcy case
16 in place of ALLAN S. WILLIAMS."

17 Also on March 1, 2011, a Notice of Hearing on Substitution
18 of Attorney in Pro Per was filed, setting a hearing on the
19 request to authorize substitution for March 15, 2011.

20 At the hearing on the United States Trustee's motion to
21 dismiss the case on March 2, 2011, the debtor appeared by
22 herself. At that hearing, the debtor testified that she had
23 agreed to pay Price Law Group \$1,899 for her case. She paid \$900
24 "up front" prior to the time the case was filed. She never met
25 an attorney from Price Law Group. Everything was done via e-
26 mail. Price Law Group required her to give them her bank account
27 information before they would file the case for her. They then
28 took money out of her bank account in December 2010 and in

1 January and February 2011. The money they took out of her bank
2 account was to pay the balance of the filing fee. She testified
3 that she did not understand that she was not legally obligated to
4 pay Price Law Group anything after the bankruptcy case was filed.
5 She testified that she went to the meeting of creditors and met
6 with an attorney she did not know and had never met before.
7 Price Law Group told her that they would file an opposition to
8 the motion to dismiss, but they failed to do so.

9 Allan S. Williams and Price Law Group filed a response to
10 the court's Order to Show Cause on April 1, 2011. In that
11 response, Mr. Williams took responsibility for everything that
12 had happened in the case and explained the circumstances of his
13 representation of debtor. He explained that he was paid the sum
14 of \$900 prior to the filing of debtor's petition, which included
15 the \$299 filing fee; that the \$364 he received post-petition had
16 been returned to debtor; and that he did not respond to the
17 United States Trustee's motion to dismiss because the debtor
18 wanted to proceed in a different manner, which he was not free to
19 disclose because of the attorney/client privilege. He stated
20 that because he was unable to represent debtor in the manner she
21 wished, he filed his motion to withdraw as counsel and noticed it
22 for hearing. He included in his response a detailed listing of
23 time entries concerning this case, which shows a substantial
24 amount of work done in return for the payment he received in this
25 case.

26 The Ninth Circuit has written several decisions about the
27 ability of attorneys representing debtors in chapter 7 cases to
28 collect their fees. The Circuit discussed these cases in In re

1 Sanchez, 241 F.3d 1148 (2001). In that case, the Court of
2 Appeals held that a chapter 7 debtor's attorney does not violate
3 the automatic stay by collecting reasonable fees for post-
4 petition services. The court reviewed its prior decisions in
5 this area. In In re Biggar, the Court of Appeals held that fees
6 for services rendered before a bankruptcy petition was filed,
7 even though not due to be paid until after the filing, were
8 dischargeable in the bankruptcy as a prepetition debt. 110 F.3d
9 685 (9th Cir. 1997).

10 In In re Hines, the Court of Appeals held that the
11 obligation to pay for post-petition legal services was not
12 dischargeable. 147 F.3d 1185 (9th Cir. 1998). In Hines, the
13 court stated that:

14 Enforcement of debtors' fee obligations to their attorneys
15 is necessary to ensure that legal services are provided to
chapter 7 debtors who are in most need of those services.

16 In re Sanchez, at 1150.

17 In Sanchez, the court described the holding in Hines as
18 essentially a doctrine of necessity.

19 We observed that the absence of a legally enforceable right
20 to payments for post-petition legal services would lead to a
"massive breakdown" of the "entire system." We noted a
21 possible alternative ground for reaching the same holding
would be that a claim for post-petition legal services does
22 not arise until the lawyer actually performs those services.

23 Sanchez, at 1151 (citations and internal quotations omitted).

24 In Sanchez, the court observed that a reasonable fee for
25 post-petition services is not a dischargeable debt and may be
26 collected in the course of the bankruptcy without violating the
27 automatic stay. Id. at 1151. However, the court also ruled that
28 collection of a fee that the debtor's attorney knows to be

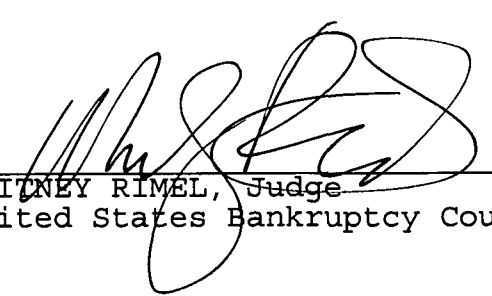
1 unreasonable does violate the automatic stay.

2 In this case, the disclosure of compensation by Price Law
3 Group does not distinguish between post-petition services and
4 pre-petition services. Therefore, the court cannot determine
5 whether any of the amount that the debtor agreed to pay after
6 filing the case was for post-petition services. Under the
7 circumstances, it must be presumed that the entire fee was for
8 pre-petition services.

9 However, the debtor's case has come to a successful
10 conclusion. Subsequent to the issuance of the Order to Show
11 Cause, the United States Trustee withdrew the motion to dismiss
12 the case. The debtor's discharge was entered on April 11, 2011.
13 A refund of \$364 paid post-petition has been returned to debtor.

14 Mr. Williams has convinced the court that any failure to act
15 was not a result of negligence. Under the circumstances, the
16 court finds no grounds for the imposition of sanctions against
17 Allan S. Williams and/or Price Law Group.

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19 DATED: 5/27/11

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22 WHITNEY RIMEL, Judge
23 United States Bankruptcy Court
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